IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.03.2002

Coram :

THE HONOURABLE MR.JUSTICE P. SHANMUGAM
and

THE HONOURABLE MR. JUSTICE P. THANGAVEL

C.M.A.No.1556 of 1999 and C.M.P.Nos.17981 to 17982 of 1999

Smt. Shanthi ...Appellant

Vs.

V. Vijayaraghavan .. Respondent

PRAYER : Appeal against the order of the Family Court Judge, Madurai dated 19.6.1996 made in H.M.O.P. No.96 of 1994.

ORDER : This Appeal coming on for hearing, upon perusing the Memorandum of Appeal, the order of the Lower Court, and the material papers in the case, and upon hearing the arguments of Mr. P. Gopalan, Advocate for the Appellant, and of Mr. A. Xavier Arulraj, Advocate for the Respondent, and having stood over for consideration till this day, the Court passed the following Judgment :-

: J U D G M E N T

P. SHANMUGAM, J.

The respondent/wife before the Family Court is the appellant herein. The husband filed a petition under Section 12(1)(b) and (c) of the Hindu Marriage Act, 1955 to declare the marriage between the appellant and the respondent as a nullity. The petition was allowed by the Family Court, Madurai and the appeal is against this judgment and decree.

2. The facts of the case are as follows :
The parties were related. The husband is the uncle's son of the wife's father and they were living in Madurai Town. The husband is

employed in the Tamil Nadu Slum Clearance Board. The wife is a graduate. The marriage between the parties was solemnized on 30.8.1991 as per their caste custom and usage. The marriage was preceded by the ceremony of 'seeing' the girl for the approval of the marriage in the beginning of August 1991. Thereafter, the marriage was fixed and celebrated on 30.8.1991. According to the husband, the marriage could not be consummated because the wife did not co-operate and he had discovered from her conduct that she, after her graduation, had become a lunatic or of unsound mind and that such mental derangement existed during and prior to the marriage and that she was unfit for marriage and for procreation of children. He alleges that if the real nature and mental condition of the girl had been informed to him earlier, he would not have agreed to marry her. She was given treatment and thereafter, she was left in the husband's house. On one occasion, while the husband was in his office and his parents were sleeping, she had poured kerosene on her body and set herself fire, as a result of which she suffered 40% burn injuries. In the above circumstances, he had to file the application for annulling the marriage.

3. On behalf of the wife, a counter was filed by her father, opposing the averments made in reference to her mental condition, denying them as false. According to her, she had graduated in B.A. Economics in first class in the year 1989. She had won several awards during her course of study. Even in June 1991, the husband and his parents visited their family and only after having been satisfied fully, they have agreed for the marriage. The husband is not a stranger to her family and he knew the nature of the wife even before the marriage that she was hale and healthy and therefore, he agreed for the marriage. She states that the allegation that there was no consummation of the marriage has been created by the husband for the case with an ulterior purpose and that the allegation that the wife had become a lunatic after the marriage is false. There was no treatment before the marriage and she denied all the allegations made in the petition as false and invented for the purpose of the case. The wife was taken to the doctor only at the instance of the husband and he was satisfied on the advice of the doctor that the respondent was normal. There was no deception played on the husband, and on the contrary, the husband and their family were fully satisfied after the enquiry and then only they consented for the marriage. The husband was not induced to marry the respondent and the allegations were not true. She had suffered burn injuries because of an accident and the husband himself has given a statement before the police that the accident took place due to the bursting of gas stove at the time of cooking and also that there was no necessity for the wife to pour kerosene and burn herself. The counter further says that the wife became pregnant after the marriage, but the said fact was suppressed by the husband.

4. One of the main objections raised by the counsel for the appellant on the maintainability of the petition is that the petition described the respondent in the cause title of the petition as a lunatic represented by her father and guardian without an order of the Family Court. The application I.A. No.30 of 1994 filed for appointment of Mr.

Parthasarathy, the father of the respondent, as her guardian on 1 3 .1 .1995, after nearly three years of the filing of the petition, was ordered on 11.12.1995 with a non-speaking order. According to the learned counsel for the petitioner/appellant, the O.P. filed without an order of the court or even a permission to implead the wife as lunatic through her father in the I.A. is not maintainable and ought to have been dismissed.

5. On merits, he submits that the petition under Section 12(1)(b) and (c) of the Act is not maintainable on the pleadings of the respondent/husband. There is no misrepresentation on the part of the appellant and her family on the alleged material fact of the mental disorder of the wife. The husband in his pleading has admitted that he went to the wife's house in the beginning of the year 1991 prior to the marriage to see the girl and the husband agreed to marry her. In his evidence, he categorically admits as follows :

"The parents of the respondent did not compel me."
On the other hand, according to him, it is only his parents who had compelled him to marry her. He further says that since his parents were old, the marriage was conducted by himself. He further admits that he, along with his father, mother and his brother-in-law, went to see the girl and also states that his parents would have enquired about the girl. Since the parties belong to the same community and are related, he also says that in the same road in which he is residing, there are relatives of the girl and that only after enquiring with them, his parents had informed the petitioner about the girl. According to the learned counsel, the requirement under Section 12(1)(c) that the consent of the husband was obtained by suppression of material fact has, therefore, not been made out on the pleadings of the husband himself. He further submits that the wife was not suffering from mental disorder of such a kind or to such an extent so as to be unfit for the marriage and for procreation of children. The evidence of the doctor falsifies the whole case of the husband. According to him, the wife has withstood the cross-examination for several days and the facts that the parties are closely related and living in the same town with relatives in the same street and that the treatment was taken by the wife at the instance of the husband would all reveal that there is absolutely no ground for sustaining the petition under Section 1 2(1)(c) of the Act. It is the appellant who was being treated cruelly and unfairly, and her sleeplessness cannot be characterized as mental insanity. He further submits that the evidence would disclose that an accident is taken advantage of with an ulterior purpose and therefore, he prays for setting aside the order of the Family Court.

6. Learned counsel appearing on behalf of the respondent/husband seeks to sustain the order of the Family Court on the ground that there is a finding that the wife is suffering from Schizophrenia, a mental disease and that she is not fit for marital life and for procreation of children and that she will not be able to fulfill her marital obligation and bring up children. He submits that the marriage has not been

consummated because of the mental condition of the wife. Consequent on her mental condition, she attempted to burn herself unsuccessfully and therefore, it will not be possible for the respondent to live with a wife with such a mental condition.

7. We have heard the counsel for the parties, perused the materials placed before us and considered the matter carefully.

8. The main question that arises for consideration is whether the husband has made out a case for an order under Section 12(1)(b) and (c) of the Act.

9. The main ground in the petition is that the consent of the husband was obtained by suppressing the material fact concerning the wife, namely that she was suffering from mental disorder to such an extent that she is unfit for marriage. The provision lays down mental capacity as one of the conditions for the marriage and mental disorder renders the marriage voidable. Mulla's Hindu Law, XVII Edition, Volume II at page 71 says as follows :

"An objection to a marriage on the ground of mental incapacity must depend on a question of the degree of the defect in order to rebut the extremely strong presumption in favour of the validity of the marriage, which has in fact, taken place."

It further says in reference to Section 5 as follows :

"The requirement is very simple one which does not demand any high degree of intelligence on the part of the parties to comprehend that the marriage is being solemnized and there is always a strong presumption that the requisite mental capacity was present."

N.R. Raghavachariar's Hindu Law, XVII Edition, Volume-I, at page 972, dealing with this question says as follows :

"The prime question to be answered in connection with the validity or otherwise of a marriage alleged to have been contracted between persons, either of whom is said to be an idiot or insane person, is the question whether the particular person is in a position to comprehend or appreciate the significance of the marriage and its effects and obligatinos on his status and condition in society. If the answer is in the affirmative, the marriage cannot be impugned as invalid. If the answer is in the negative, the marriage is voidable under Section 12(2)(b) of the Act."

10. From the evidence, it is clear that the parties are closely related to each other and that the wife's relatives are living in the same street where the husband's family resides. The husband's family had enquired about the particulars of the girl's family and thereafter arranged for seeing the girl. Four or five persons comprised of the parents and relatives of the husband visited the girl's family and got

satisfied before giving consent for the marriage. It is the clear evidence of the husband that the parents of the girl did not compel him to marry her. On the contrary, it is seen that on being satisfied with the girl and her family, it is the husband's parents who have compelled him to agree for the marriage and that he agreed. Therefore, there is absolutely no question of consent of the petitioner having been obtained by force or fraud or misrepresentation about the condition of the wife prior to the marriage. The further admitted fact is that it is the husband who had conducted the marriage in person, since his parents were old and the parties were able to comprehend and appreciate the significance of the marriage.

11. The allegation of the husband in the pleading are twofold. One is that the non-consummation of the marriage and the unwillingness on the part of the wife to have sexual intercourse on the first night of their marriage and thereafter. The second allegation is the attempt on the part of the wife to pour kerosene on her body and burning herself and consequently suffering 40% burn injuries.

12. The defence of the wife is that she acted normally and had sexual intercourse with her husband. She further says that she had conceived and that she had suffered an abortion. According to her, the second instance occurred purely as an accident due to the bursting of the gas stove and the letter written by the wife marked as Ex.A.3 would show that the incident did not happen at her instance.

13. On the face of this evidence, the evidence of doctor assumes importance. P.W.2 Dr. V.D. Krishna Ram is a Post Graduate qualified M. D. in Psychiatry having his own clinic. According to the doctor, he had treated the appellant as an in-patient from 14.10.1991 to 26.10.1991 and from 11.11.1991 to 23.11.1991. He had treated her from 1.12.1991 as an out-patient. In the cross-examination, he has stated that the wife was suffering from a completely curable disease and that there is absolutely no impediment for the wife to have family life. He further says that after taking treatment from him, the wife has missed periods and that he he had directed her to see a Gynaecologist. It is pertinent to note that the husband has taken the wife to Dr. Krishna Ram for treatment. The appellant, in her deposition as R.W.1 , has stated that she could not sleep properly and for that reason she consulted the doctor. According to her, the doctor has told her that if she takes medicine properly, everything will be alright and that she is having no disease. Since it is a new place and the husband is having a very big family and her mother-in-law was talking to her in a threatening tone and that is why she was afraid and that she has no other disease. According to her, she had been looking after all the family work. From the above evidence, it could be seen that the wife has totally denied all the allegations made by the husband. The doctor has clearly and categorically stated that the wife is not having any incurable disease, much less Schizophrenia. In the absence of any other independent witness, it has to be stated that the husband has come forward with a petition with the two ingredients in order to satisfy the requirement of Section 12(1)(b) and (c).

14. The Family Court Judge, on the basis of the deposition of the wife that she was suffering from sleeplessness, held that the allegations that the wife was a Schizophrenia patient at the time of the marriage itself and that she is not fit for marital life and for procreation of children and that she will not be able to fulfill her marital obligations to bring up children stand proved. The learned Judge further proceeded to state as follows in paragraph 12 of the judgment :

"When the doctor has been questioned as to whether she could be cured, the doctor has clearly stated that it is not a disease which can be cured, but it could be arrested by continuous treatment."

To appreciate the mental state of the wife, we give below the true translation of the evidence of the doctor :

"CHIEF EXAMINATION : I am an expert in Psychiatry. The respondent Santhi was treated as my in-patient in Ram Clinic from 14.10.1991 to 2 6.10.1991 and from 11.11.1991 to 23.11.1991. Thereafter, she was treated as out-patient from 1.12.1991. The prescription given during the treatment is Ex.A.2 series. The respondent was suffering from mental disease. When I saw her, she was having fear, tension and a feeling that somebody is threatening her and an illusion that she will be arrested by police and was having suicidal thoughts. This type of disease will occur suddenly. It cannot be stated as to when this will come and when this will go. The disease should be treated till it is cured. The respondent did not come for treatment after 1.12.19 91 . She had not taken complete treatment. Because of this disease, there will not be any difficulty in her mental condition to bear children. It is better that persons with such disease get married after cure. It is possible to get the disease cured.

CROSS EXAMINATION : I am a Government doctor. I have not shown in Ex.A.2 that I am a Government hospital doctor. I do not remember when Santhi was brought to me for treatment. The address in Ex.A.2 is of my clinic. Below the writings of the receptionist, I have entered my notes. They have told me that after getting treatment from me, she has missed her periods. In Ex.A.2 at page 2, I have written that she must get treatment from Dr. Meena Bai. We do not use the word ' lunatic'. During treatment, the respondent was afflicted with mental disease. This disease can be completely cured. After 1.12.1991, they did not come for treatment. I do not know whether she is completely cured. when I saw her on 1.12.1991, she was not completely cured. In Ex.A.2, I have noted down the medicine that she should take and nothing else. There is no hindrance whatsoever to lead a family life."

The doctor as expert witness, in his evidence, has opined that the disease which the wife is said to have been suffering from is curable and there is possibility of curing her and that there is no impediment for her to lead a family life. Inspite of this clear evidence, the Family Court Judge has misread the same and has found as if the doctor has opined that it is not a disease which can be cured. Further, the learned

Judge also has erroneously held that the statement of the wife will prove that she is suffering from Schizophrenia.

15. 'Schiz-o-phre-nia' has been explained in the Steadman's Medical Dictionary, 27th Edition at page 1600 as follows :

"A common type of psychosis, characterized by abnormalities in perception, content of thought and thought process (hallucinations and delusions) and by extensive withdrawal of interest from other people and the outside world, with extensive focussing on one's own mental life. The 'split' personality of Schizophrenia, in which individual psychic components or functions split off and become autonomous is properly but erroneously identified with multiple personality in which two or more relatively complete personalities dominate by turns, the psychic life of an individual."

.....

"Early symptoms include shortened attention span, memory deficits and diminished ability to make decisions. Most patients become ill before age 40. Psychotic symptoms persist for months and years and there is life long risk of elapse."

.....

"Virtually all patients display impoverished thought content, social withdrawal and impairment of occupational functioning and even with intensive psychotherapy and drug treatment, about 25% require custodial or instrumental care. Although some persons with Schizophrenia become assasins or mass murderers, the vast majority pose no threat to society; about 10% commit suicide."

Concise Oxford Dictionary, 10th Edition defines the expression Schizophrenia as follows :

"A long term mental disorder of a type involving breakdown in the relation between thought, emotion and behaviour, leading to faulty perception, inappropriate action and feelings and withdrawal from reality into fantasy and illusion."

Readers Digest Universal Dictionary, 1988 Edition defines Schizophrenia as follows :

"Any group of psychotic conditions, characterized by withdrawal from reality and accompanied by highly variable and affective behavioural and intellectual disturbances. New Latin 'split mind' schizo + phrenia."

By a combined understanding of the definitions and the meaning and by going through the evidence of the expert as well as R.W.1, we are clear in our mind that the wife does not show any of the symptoms to bring her within the disease called Schizophrenia.

16. The respondent/wife was examined at length on 9.1.1996, 29.1.1996 and 8.2.1996. Her evidence is cogent and clear. According to

her, she has completed B.A. Degree in the year 1989 in first class. During her studies, she has obtained awards. She specifically says that on the date of the marriage itself, the first night took place in her husband's house and that she had conducted herself just like any other ordinary girl. Since it was a new place, she was a little bit afraid. She denied that she had acted as if she had mental disease on that day. She clearly says that they had sexual relations and denies the statement that she did not permit to have sexual relations as false. Since she could not sleep well, she was taken to the doctor. The doctor told her that she will become alright if she takes the medicine. She does not have any other disease. The husband's family is a big family. Whenever the husband's mother talks in a threatening tone, she was scared of her and there is no other reason for her fear. She had denied all the suggestions that she had attempted to commit suicide. She also said that only during the time of the accident she suffered injuries. A reading of the examination of the wife shows that there is an attempt on the part of the respondent/husband to bring her within the parameters of the mental disease and to establish that she had suicidal tendencies and that she had fear psychosis. In the absence of any independent witness supported by the medical report, the Family Court is not justified in coming to the conclusion that the wife is suffering from Schizophrenia.

17. Reliance was made on Ex.A.3, the letter said to have been written by the wife to the husband, one month after returning from the hospital after taking treatment. In that letter, there is a reference that she was not able to understand how the accident had occurred and she feels sorry for the accident. She says that she could come to her senses only when the fire touched her face. She further speaks so affectionately about her husband stating that only because of the husband's assistance, she could recover. According to her, she is expecting for his visit everyday. There is no reference to this letter in the examination of either the husband or the wife. But, it is seen that because of the burn injuries, a police case was registered and that in the complaint, she is said to have stated that she suffered burn injuries because of her mental condition. Obviously, since it was a police case and that such an occurrence took place within a year of the marriage, there is a likelihood of dowry case against the husband and the letter makes it clear that there is no complaint against the husband. Therefore, the letter cannot be pressed into service to show that the petitioner was suffering from mental illness. The letter is apparently intended to relieve the husband from any sort of complaint or liability.

18. A Division Bench of the Punjab and Haryana High Court, in MOHINDER KAUR VS. BIKKAR SINGH (A.I.R. 1979 P & H 248), has taken the view that one cannot challenge the marriage on the ground of fraud if he had sexual intercourse with the other party to the marriage after having found that his consent was obtained by fraud. Even a single act of co-habitation after discovery of fraud would be a good ground for dismissal of the petition for nullity of the marriage. The principle underlying is that of condonation. It is always open to the parties to marriage to stand by the alliance even after their knowledge of a

vitiating circumstance. If they approved the alliance by cohabitation together as husband and wife, it will no longer be open to either of them to reprobate by filing a petition for nullity of the marriage. In this case, the appellant/wife has clearly stated that she had acted normally on the first night and had sexual intercourse with the husband. She has, in her evidence, stated that she had conceived, but later on, it was aborted. This fact is corroborated by the evidence of P.W.2, the doctor, before whom the wife is said to have stated that she had missed her periods and that he had suggested that she must go and see Dr. Meena Bai, a lady doctor. Therefore, the contention of the husband that he did not have sexual intercourse with the wife is only made up for the purpose of the case. On the basis of the evidence, it is clear that assuming for the sake of argument that the wife suffers from a mental disease and that the same was suppressed, because of the co-habitation by the husband with the wife, he had condoned the alleged suppression and therefore, the petition for divorce is not sustainable.

19. A Division Bench of our High Court in SUJATHA VS. C.D. HARIHARAN [1995 (2) M.L.J. 326], in reference to the question of nullity of marriage on the ground of inducement and concealment of material fact, it was held that to have a cause of action for annulling the marriage under Section 12(1)(c) of the Hindu Marriage Act, to constitute fraud, there must be some abuse of the confidential position, some intentional imposition or some deliberate concealment of material facts which are fundamental basis to the marriage contract. Concealment, if any, must be of such a nature which affects the ordinary marital life of the parties. The Division Bench further held that unless it is incurable, any concealment of the same will not amount to concealment of material fact which will give a cause of action for annulling the marriage. In this case, there is a clear evidence by the expert doctor that the wife is not suffering from any incurable disease. On the contrary, the doctor has categorically stated that there is no impediment for the wife to maintain family life and that the disease is completely curable. Therefore, the husband has not established that prior to the marriage, the wife was suffering from a mental disease of such a nature and that the said fact was suppressed and not disclosed to him and that she continues to have such kind of a disease, in order to seek for annulment of the marriage.

20. Counsel for the respondent relied on the judgment of a learned Judge of the Madhya Pradesh High Court in ALKA SHARMA VS. ABINESH CHANDRA SHARMA (A.I.R. 1991 M.P. 205). The learned Judge in that case took the view that the court can nullify the marriage if either condition or both conditions contemplated existed due to the mental disorder and the word 'and' between the expressions 'unfit for marriage' and 'procreation of children' in Section 5(ii)(b) of the Act should be read as 'and/or'. The argument in that case opposing the petition was that it is not only sufficient to establish that the party is suffering from mental disorder to such an extent as to be unfit for marriage, he must also prove that she is incapable for procreation of children. In the absence of such a plea, it was argued that the petition was not maintainable. We need not go into the 'creative interpretation' of the

statute by the learned Judge of the Madhya Pradesh High Court, since this judgment may not be any assistance to the respondent in this case as in our view, the husband has not established that the wife is suffering from a mental disorder to such an extent as to be unfit for marriage. We have taken the view from the pleadings and evidence that there was no such kind of suppression or fraud in reference to the mental condition of the wife and that as a matter of fact, it has not been proved that she was suffering from such a mental disorder to the extent that she is unfit for marriage. Suffice it is to reiterate the view of N.R. Raghavachariar in reference to mental disorder that the question that has to be answered is whether a particular person is in a position to comprehend and appreciate the significance of the marriage and its effects and obligations. One of the obligations is to bear children and to bring them up.

21. In RAM NARAIN VS. RAMESHWARI (A.I.R. 1988 S.C. 2260), the Supreme Court held that mere branding of spouse as Schizophrenic is not sufficient. The degree of mental disorder must be proved to be such that the petitioning spouse cannot reasonably be expected to live with the other. It is worthwhile to quote the observations of their lordships in this context :

"The context in which the idea of 'unsoundness of mind' and 'mental disorder' occur in these sections as grounds for dissolution of marriage require the assessment of the degree of the 'mental disorder'. Its degree must be such as that the spouse seeking the relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality could justify dissolution of marriage, few marriages would indeed survive in law. ' Schizophrenia', it is true, is said to be a difficult mental affliction. It is said to be insidious in its onset and has hereditary predisposition factor. It is characterized by the shallowness of emotions and is marked by a detachment from reality. In paranoid status, the victim responds even to fleeting expressions of disapproval from others by disproportionate reactions generated by hallucinations of persecution. Even well meant acts of kindness and of expression of sympathy appear to the victim as insidious traps. In its worst manifestation, this illness produces a crude wrench from reality and brings about lowering of the higher mental functions. But, the personality disintegration that characterizes this illness may be of varying degree. Not all Schizophrenics are characterized by the same intensity of the disease. The mere branding of a person as a Schizophrenic, therefore, will not suffice. For the purpose of Section 13(1)(iii) of the Act, Schizophrenia is what Schizophrenia does. Applying the above ratio, we find that mere characterization of the wife as a Schizophrenia patient is devoid of any substance."

22. In MUNISHWAR DATT VS. INDRA KUMARI (A.I.R. 1963 PUNJAB 449), a learned single Judge of the Punjab High Court has taken the view that an attack of insanity where it amounts to mania or Schizophrenia, if it comes after marriage, will not furnish a ground for annulling the

marriage under Section 12 of the Act. What is of importance, therefore, is the mental condition at the time of marriage which is the crucial time for determining the question of annulment. If insanity supervenes subsequent to marriage, it cannot be invalid. Similarly, where a party had suffered from an occasional derangement of mind prior to marriage, but the mental state at the time of marriage was sound, such marriage cannot be avoided. The courts have to draw a distinction between a sudden occurrence of insanity in contra distinction to cases where unsoundness of mind has been a progressive growth. A sudden attack of insanity before marriage, which has been transitory, cannot invalidate the marriage, if at the time of marriage the malady had ceased. The marriage of a person contracted while he or she was lucid despite the occurrence and re-occurrence of insanity before or subsequent to marriage cannot invalidate it. It thus follows that on the state of mind at the time when the marriage is celebrated, its validity or invalidity depends on the mental condition, before or after the ceremony is immaterial, except, insofaras it affords evidence of mental incapacity at the time of performance of the marriage. The test applied is that the person should have the capacity to understand the nature of contract of marriage and the duties and responsibilities attached to it. In cases where the marriage is sought to be annulled on the ground of idiocy or lunacy of a spouse, the onus to support the plea that insanity existed at the time of marriage lies on the petitioner. Of course, where permanent insanity is shown, then it is for the respondent to show that the marriage was performed during the lucid interval. The presumption is in favour of the validity of the marriage and in favour of the mental capacity of the spouses entering into matrimony. As marital union is closely associated with peace and happiness of society in general and individuals and families in particular, the marriage should not be annulled on grounds of mental incapacity unless the expert evidence of the alleged idiocy or lunacy at the time of marriage is cogent and compelling. The petitioner, in order to succeed, must make out his allegations clearly and beyond doubt. The consequences attending on annulment of marriage are grave and the courts, before passing the degree of nullity, must insist on production of evidence which is satisfactory and convincing. The courts must eschew matters in consideration which are irrelevant and extraneous and concentrate upon the real question in issue, namely the degree of mental infirmity at the time of marriage invalidating its solemnization. The evidence of pre-nuptial or post-nuptial insanity must be such from which an inference at the time of marriage may be conducively deduced. The standard of proof, in such cases, must approximate to the satisfaction of the court beyond reasonable doubt. The courts have to be a vigilant guardian to see that the legal requirements are fulfilled before it annuls the marriage which has been solemnized and the grounds justifying the granting of leave should have been strictly proved for determining the question whether cause exists for annulling the marriage by virtue of mental incapacity. The courts have to draw a conclusion from the evidence produced in individual cases and after legal test, the court has to exercise its common judgment after taking into consideration such assistance as may be forthcoming from medical evidence. The gravity and importance of the issue requires that the court ought to form its own

independent judgment on the point. Medical testimony can be of considerable assistance and even guidance, but the question is one for the court and not for the experts, and the evidence of the export does not relieve the court from the obligation of satisfying itself on the point beyond reasonable doubt. A Full Bench of the Madras High Court, in C. SOLOMON VS. JOSEPHINE (A.I.R. 1959 MADRAS 151), dealing with Sections 18 and 19 of the Divorce Act and deciding the question at what stage the mental state of a person is relevant for the purpose of divorce, held that the mental state at the time of the petition or at the time of the trial would not be a ground for declaration that the marriage is null and void. The relevant stage would be at the time of the marriage. We are in full agreement with the ratio laid down in the decision of the Punjab High Court in reference to the standard of proof and the consideration of medical evidence.

23. The appellant had been described as "lunatic" in the petition and continued to be so without any order till the termination of the proceedings and without a speaking order of the court appointing a guardian, as required under Order 32, Rule 3 of the Code of Civil Procedure. The order of the Family Court is liable to be set aside on this serious error.

24. For all these reasons, we are of the view that the judgment and degree of the Family Court is liable to be set aside and it is accordingly set aside. The appeal is allowed. No costs. Consequently, the connected C.M.Ps. are closed.

Index : Yes (P.S.M.J.) (P.T.J.)
Internet :Yes 13.03.2002
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To
The Family Court Judge,
Madurai.